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GEORGIA: CORRUPTION AND TRANSPARENCY IN CIVIL LITIGATION

PRINCIPAL FINDINGS

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ABSTRACT

As part of a broader task, to develop a methodology for assessing corruption in specific sectors, the IRIS Center implemented a pilot survey in Georgia in the area of civil litigation. Lawyers and judges were surveyed independently and the results of the two surveys were then compared. The surveys were designed to be sector-specific—that is, tailored to the institutional environment of a particular sector—in order to (1) point to specific institutional factors in corrupt practices, and (2) assist in identifying at-risk sectors.

The methodology incorporates USAID's TAPEE framework for analyzing corruption vulnerabilities (Transparency, Accountability, Prevention, Enforcement, Education). Because the actual rules did not vary, IRIS asked about variations in enforcement. In fact there was not any significant variation in integrity across courts.

The survey results differed substantially between lawyers and judges. Lawyers reported a significantly higher level of corruption in the courts than judges reported. Lawyers also reported less integrity in the system than judges.

Substantial variation in reported corruption levels across regions and courts suggests that aid programs to combat corruption—like anticorruption programs—or avoid corruption—like MCA programs—could benefit from regional targeting.

KEY WORDS

Survey, methodology, anticorruption, TAPEE, courts, judicial reform

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I. BACKGROUND

The United States Agency for International Development (“USAID”) asked the Center for Institutional Reform and the Informal Sector (“IRIS”) to develop a methodology for assessing corruption and factors related to corruption in various sectors and various countries. The objective was to be able to identify sectors that were more corrupt or more at risk for corruption, in order to better target USAID’s support efforts, as well as to develop a means of monitoring and evaluating the impact of anti-corruption efforts. The methodology was to be based on the factors identified by USAID as important in preventing or controlling corruption. These factors are transparency, accountability, prevention, enforcement and education, or “TAPEE”.

In conjunction with USAID, three sectors and countries were identified opportunistically based on the interest of the local mission and government counterparts, and IRIS’ experience and existing relationships. A methodology that combines qualitative assessments with survey instruments was developed and is being piloted to assess corruption and TAPEE factors in civil litigation in Georgia, business regulation in Russia, business licensing in Romania, and pharmaceutical licensing in Bulgaria. This report presents the findings from the study on civil litigation in Georgia.

The Georgia study incorporated a two-step process. In July, 2003, IRIS researchers visited Georgia to conduct in-depth interviews with judges, lawyers and key court users. The purpose of this visit was 1) to identify corruption and TAPEE issues that should receive particular attention in the survey; 2) to better understand the institutional framework and operation of the Georgia courts in order to frame questions on corruption and TAPEE factors; 3) to discuss with Georgian interlocutors the best way to administer a survey on potentially sensitive subjects, and 4) to help researchers better interpret the data subsequently obtained. The information gathered from this mission helped shape the methodology of the subsequent survey and the survey instruments.

In the Georgian context, IRIS decided to survey lawyers about corruption levels in various Georgian courts, and to survey judges about the TAPEE factors in those courts, and to explore the relationship between the two reports. Working with GORBI, a Georgian survey firm, IRIS surveyed 175 judges and 1005 lawyers in eleven regions of Georgia. Surveys were administered to lawyers and judges from December, 2003 until late February, 2004. Data collection was slowed by political events in Georgia.

The resulting methodology differs from many existing survey instruments used to measure corruption in several ways. In particular, it attempts to focus not only on corruption, but on the institutional determinants of corruption, which would theoretically allow for identification of at-risk sectors. Moreover, it is tailored to the institutional environment of a particular sector in order to ask more appropriate questions, whereas most corruption surveys are generic common instruments used across countries.

Section II of this report describes civil litigation in Georgia. Section III briefly describes the methodology of the study. Section IV sets out principal findings of the study. Section V concludes.

II. THE COMMON COURTS OF GEORGIA

Once one of the wealthiest regions of the Soviet Union, Georgia has been in perilous economic decline since independence in 1991. Civil war broke out, subsiding in 1994 and followed by the

adoption of a new constitution on August 24, 1995. As of 2002, the population of approximately 5.2 million has an average monthly salary of 104.5 Georgian Lari (GEL)¹ or approximately \$520 despite a comparatively high level of education. In this environment, those who have jobs support large extended families.

Corruption in Georgia is systemic, and there are problems of state capture and organized crime. Georgia ranked 124th out of 133 countries in the 2003 Transparency International ranking of corruption perception. A June 2000 household survey on corruption found that “57 percent of households, and 44 percent of enterprises, felt that corruption was worse relative to 4 years ago. More than half the surveyed officials reported that bribery often or frequently occurs.” A World Bank report on the business environment states that reforms are not likely to be successful unless corruption issues are addressed. (World Bank 2003) Similarly, the IMF recently called on Georgia to control its “pervasive corruption.” (IMF 2003) Appendix A shows how Georgia ranks in a number of corrupt-related surveys.

According to interviewees, under the Soviet system, judicial corruption was rampant. The justice system was characterized by hierarchically organized corruption, with rents flowing from the lowest instance court to the highest court. Judicial positions were bought and sold. Georgia scores poorly on Rule of Law according to Kaufmann, Kraay and Mastruzzi (2003). A World Bank study of perceptions of the justice system shows that more respondents rate the system as unfair, dishonest, expensive and unable to enforce its decisions than in Russia, Kazakhstan and Lithuania. (World Bank 2002) In the same study, fewer respondents vouched that bribes played no role than in Russia, Kazakhstan, Lithuania and Azerbaijan. Overall confidence in the legal system was higher than in Russia, but lower than Kazakhstan, Lithuania and Azerbaijan. (World Bank 2002)

The Georgian government and donors have made a substantial effort to strengthen the judiciary. The Law on the Judiciary was adopted in June 1997. The law unified the court system, eliminating ad hoc courts; established an appellate jurisdiction in the second instance courts to replace previous cassation procedures; and established the Council of Justice (COJ) and transferred court administration support services from the Ministry of Justice (MOJ) to the newly created Department of Logistical Support (DLS). It also established a framework for qualification examinations of judges with the expectation that the new Georgian judiciary would consist of judges of high professional standards and personal integrity; and it provided salaries for judges at a level at least equal to that of a member of Parliament. (World Bank 1999) As a result of the creation of the judge’s exam starting in May, 1998, there was substantial turnover in the bench. Most interviewees agreed that judges are now more competent, but less experienced.

Donors, including the World Bank, USAID and GTZ, have invested heavily in judicial reform in Georgia. These reforms aimed to better support the new rules of the market economy, modernize the courts, strengthen the rule of law, and improve the competence and professionalism of the justice personnel. The World Bank has managed a \$14.4 million project to support reforms in court administration, case management, computerization, the rehabilitation of court buildings, training and public awareness campaigns. (World Bank 1999) USAID has supported the creation of qualification exams for judges, and soon, lawyers, training for judges and lawyers, and

¹ As of April 22, 2004, \$1 USD = 2.06 G.E.L.

public awareness campaigns on legal rights and legal assistance. GTZ has been involved mainly in legislative drafting, training, the provision of study tours, and the supply of equipment to the courts.

Notwithstanding judicial reforms, there is still substantial public suspicion of the court system. The World Bank household survey found that “*Local courts, the police, and local prosecutors* are all believed by households to be among the five organizations that demand bribes most frequently, over half the time.” (World Bank 2000)

However, household surveys of public perceptions of the justice system may not be good proxies for the actual level of corruption in the courts. Comparatively few citizens ever have contact with the justice system. Many find the system to be complicated and have difficulty understanding it. Half of all litigants lose their cases and are not likely to agree with the judicial decision. Corruption may be the easiest explanation for outcomes with which they do not agree or that they do not understand.

THE STRUCTURE OF THE COMMON COURTS

The common court system of Georgia is composed of three types of courts: 75 Regional (rural) or City (urban) Courts, two District Courts, and the Supreme Court.²

Regional or city courts have jurisdiction over civil cases in which the amount in dispute is under 500,000 G.E.L. The operations of the court are overseen by the chairman of the court, who operates as a judge, manages staff, nominates and dismisses staff members, distributes cases among judges, and hears citizens’ complaints. Each judge has a law clerk, who keeps minutes of the proceedings, prepares materials for pending cases, and with the judge acts as a signatory on decisions. Judges also have assistants, who meet with citizens, receive applications, prepare and cases for court consideration. (ALPE 2002).

District courts have jurisdiction over civil cases where the amount of dispute is over 500,000 G.E.L. For first instance cases, district courts are organized in “collegia” of judges. There is a criminal, a civil and bankruptcy, and an administrative collegium. Cases are heard by panels of three judges in the collegium. The district courts also function as appellate courts for cases that originate in the regional or city courts or the district courts. For appellate cases, the district court is organized in chambers or “palettes”. There is a criminal, a civil and bankruptcy, and an administrative chamber. Appeals are heard by a panel of three judges. Judges are assigned to a particular collegium or chamber. The operations of each collegium or chamber are overseen by the chairman of the collegium or chamber. The operations of the court as a whole are overseen by the chairman of the court.

For ordinary civil litigation, *the Supreme Court* functions as a Court of Cassation for cases that have been appealed to the district courts. There are 30 judges in the Supreme Court. Civil cases are heard by the three-member Chamber of Civil, Entrepreneurship and Bankruptcy Cases.

² The courts of the autonomous republics of Abkhazia and Ajara were not included in this study.

The Ministry of Justice is responsible for the execution of judgments and management of the penal system. The execution of civil judgments is carried out by bailiffs. This study did not focus on enforcement of judgments.

APPOINTMENT, PROMOTION AND DISCIPLINE OF JUDGES

The Council of Justice is a body with four members each from the executive, legislative and judicial branches. The President of the Republic, the Minister of Justice, and the Chairman of the Supreme Court are also members. Several members sit permanently, including the Secretary of the CoJ. The CoJ meets weekly or biweekly depending on its volume of business.

The CoJ oversees the administration of exams for judges (and soon for lawyers). It also recommends nominees to the President, who appoints judges for ten year periods. The criteria used by the Council of Justice are: scores on the qualifying exams, notable moral and professional reputation, professional experience, and good physical health. (Law on Common Courts, Article 47). The recommendations of the CoJ are public. As of June, 2003, the President had always appointed the persons recommended by the CoJ. This appears to be in part because the CoJ remains in close contact with the President, and it is doubtful that any list is publicly transmitted to the presidency that has not already been privately vetted. The CoJ also recommends current judges for existing vacancies. Beyond exam scores, there do not seem to be any objective criteria for promotion. Positions for law clerk are handled similarly, although no exam is necessary. Finally, it initiates disciplinary action against judges, investigating and transmitting complaints to the Disciplinary Council of the Conference of Judges.

Several years ago, the President created a special commission to consider applications for positions of chairman or deputy chairman. Accordingly, these appointments fall outside the CoJ's formal competence. Notwithstanding, the CoJ makes informal recommendations regarding these appointments, and these recommendations are reportedly followed.

Judges' assistants must have legal education and undergo a three-month training course at the Judicial Training Center and/or one year of experience working as a judge, investigator, prosecutor or lawyer. The assistants must also pass an exam. The chairman of the court appoints and dismisses a judge's assistant on the recommendation of the judge. (ALPE 2002 19) Law clerks are appointed and dismissed by the chairman of the court after having passed the training course at the Judicial Training Center or having had one year's experience working as a law clerk. (ALPE 2002 19)

The Conference of Judges is a biannual meeting of the entire body of judges, but with a permanent working staff. It is supported by various working committees, including the Disciplinary Council. "Disciplinary files are consisted by the Disciplinary Council, which is composed of twelve members. Eight members – three Supreme Court judges, two Supreme Court judges from each of the autonomous republics, one judge from both Tbilisi and Kutaisi District Courts and a Regional (City) Court judge – are elected by the Conference of Judges of Georgia. The four other members are elected by the Conference of Judges by a simple majority of votes from a list of eight candidates nominated by the Council of Justice of Georgia." (ALPE 2002 23)

Judges may be reprimanded, removed from their position as chairman, or removed from the position of judge, or have their salary reduced. Only the following can initiate disciplinary action against a judge of the general courts on the complaint of any individual: the chairman of the Supreme Court against any judge, the chairman of the district court against any district court,

regional or city judge; and the Council of Justice. The initiating authority conducts a preliminary investigation of the allegations and must decide whether to proceed or to dismiss the allegations within two weeks. If the decision is to proceed, a three-member Disciplinary Council is named. If the decision is by a court chairman, he or she names two judges and a staff member to complete an inquiry within a month. If the decision is by the Council of Justice, the committee is composed of one member of the Council of Justice, one staff member, and one judge. If the committee recommends disciplinary action, the file is sent to the Disciplinary Council of the Conference of Judges. (ALPE 2002 22) It should be noted that judges may also not be recommended for reappointment by the Council of Justice after the termination of their ten year term, and there are no standards that govern this decision. A Judicial Code of Ethics was adopted by the Conference of Judges in June, 2001.

Judges may only be removed by the president, on the recommendation of the Council of Justice. (Law on Common Courts). They may be removed for various reasons, including criminal conviction, failure to perform duties for more than six months, deliberate or repeated violation of law when dispensing justice, acting in a manner that undermines the reputation of the courts or the dignity of judges, disciplinary misconduct, or occupying a position incompatible with the status or activities of judges. (Law on Common Courts, Article 54). In 2003, the Disciplinary Council removed more than a dozen judges.

REPORTS OF CORRUPTION IN THE COURTS

The initial qualitative inquiry sought information on the structure and frequency of corruption from interviewees. The objective was not to assess corruption in the courts, but rather to identify issues that might be explored in subsequent survey instruments.

Judges interviewed provided little information on the frequency of corruption in the courts, stressing that images of corruption in the judiciary are exaggerated and due to misinformed public perception. Lawyers, businessmen and NGOs however, reported that corruption is “very frequent,” if corruption refers to money payments, and “almost always” if it includes favors for personal friends and relations.

Interviewees signaled three types of corruption. The first is “speed” or “delay” payments, typically to court staff, for the routine steps of civil procedure (filing a case, setting a hearing, issuing a judgment, getting photocopies of documents, delivering documents to respondents). Some interviewees faulted the Civil Code for setting imprecise time deadlines for the various steps. According to one source, there are standardized rates for routine types of cases, including \$50 for a simple administrative act, \$100 for a divorce, and perhaps \$500 for delivering clear title to a flat. Another set of interviewee lawyers agreed that prices are standardized across courts (indicating communication and price fixing). Several interviewees reported problems with “lost” files, perhaps aggravated by the fact that some courthouses do not have well-defined public and private spaces, leading to improper public access to court documents.

The second type of corruption is the purchase of judgments. This domain is made more obscure by the fact that participants sometimes use inside knowledge to collect money for “assuring” the issuance of a certain judgment, which would have been issued in any case.

A third type of corruption reported is that of political influence, with judges receiving phone calls from government officials instructing them on how to rule. Others reported that the judges themselves initiate phone calls to ask how to rule.

Other types of corruption identified were judges' response to threats against their positions or threats of physical violence; and corruption in the execution of judgments.

A number of interviewees reported that the recertification of judges and the inauguration of a new court system in 1998 broke up the networks of corruption established under the Soviet system. As a consequence, judges uniformly told us that corruption in the courts is not organized, but individual. However, some interviewees indicated that these networks are currently being rebuilt, and that the system is fragile. Interviewees also reported that while meritocracy played no role in the pre-Soviet system, although judges continue to purchase their positions, those who demonstrate outstanding merit also stand a good chance of becoming judges. Interviewees spoke of judges "inside" and "outside" the system, and of the price paid by judges who steadfastly remained outside the system.

Interviewees suggested that surveys regarding these sensitive topics should be self-administered as those surveyed would be unlikely to speak frankly to an interviewer, particularly a local interviewer.

III. PRINCIPAL FINDINGS

Survey instruments were developed for lawyers and judges. Lawyers were asked about levels of corruption in the court with which they were the most familiar; judges in the same court were asked about TAPEE factors. Since corruption is a multi-dimensional phenomenon, we made an effort to measure the prevalence of specific corrupt practices. In response to information obtained in the qualitative assessment stage, several types of corrupt judicial behaviors were distinguished:

- taking a bribe to issue a decision (Threshold),
- taking a bribe to issue a decision in favor of the paying party (Sale),
- taking a bribe to speed the process (Speed),
- taking a bribe to slow the process (Slow),
- making a decision in favor of a friend or a relative (Relational), and
- making a decision to favor the politically influential (Political).

We next asked questions on Transparency, Accountability, Prevention, Enforcement and Education with regard to *each of* these kinds of corruption. These concepts are difficult to define in ways that they do not overlap, and real world phenomena do not always correspond neatly to one of these concepts. With this caveat in mind, we tried to assess Transparency, Accountability, Prevention, Enforcement and Education using the following technique. Judges were asked about the likelihood that such behaviors would be observed (transparency), reported (transparency), and punished (enforcement), the severity of the punishment (accountability), as well as their own values and those of their colleagues with respect to the behaviors (education/values). These questions and the summary statistics of the answers are presented in Table 6.

A number of additional questions were asked of lawyers and judges, including questions concerning their level of confidence in the confidentiality of the survey, their ability to answer questions honestly, promotion and appointment criteria for judges and court staff, and criteria used for case assignment.

Many questions asked the respondents to evaluate the likelihood, quality or importance of something on a 0 to 10 scale, where 0 is the lowest possible answer and 10 the highest. This scale was used to facilitate comparison of answers.

In response to concerns expressed to interviewers, the surveys were anonymous and self-administered, with interviewers standing by. Those completing the survey then placed the survey in a transparent box with their own hands. The boxes were constructed so that surveys could not be removed without breaking the box; this is a technology that is often used for ballots. Both judges and lawyers reported a high degree of confidence in the confidentiality of the survey, rating their confidence as 7.88 out of 10 (lawyers) and 8 out of 10 (judges).

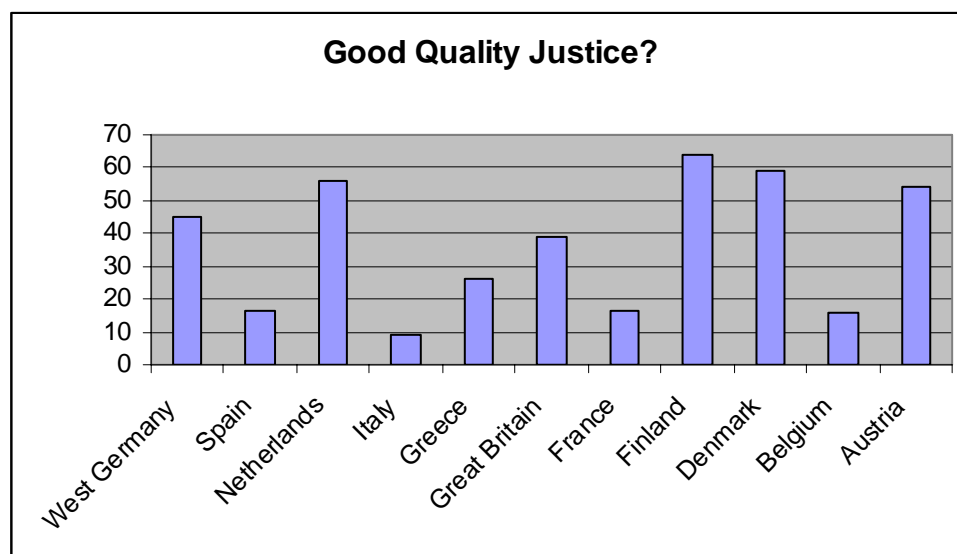
A number of checks were then run on the data. Respondents who answered that there is no corruption in the government of Georgia (0 out of 10) were eliminated as unreliable. Tests run on the lawyers' responses showed them to be internally consistent and corruption levels were reported to vary across courts and across types of corruption. However, tests run on the judges' data showed that most data from the judges' survey did not vary significantly by court or by type of data. As a consequence, it was not possible to test the linkages between TAPEE factors and reported corruption levels. One possible explanation is that judges did not know the answers to the questions asked, some of which were hypothetical probabilities. Another possibility is that these levels do not vary by court.

THE QUALITY OF JUSTICE IN GEORGIA

Lawyers rated the quality of justice in Georgia as 3.98 out of 10. About 31% of responding lawyers rated the quality of justice as 5 or better, while overall, lawyers reported that judicial decisions are fair about 55.4% of the time. Not surprisingly, judges had a much more positive outlook. On a scale of 0 to 10, judges rated the quality of justice as 7.29. Overall, 86% of responding judges rated the quality of justice as 5 or better.

By way of comparison, Figure 1 shows the percentage of respondents in a 1997 European household survey who considered the quality of justice as “good” in their country. A 2002 Harris Poll of corporate lawyers in the United States found that 39% had a positive view of the fairness and reasonableness of state court liability systems. These comparisons suggest that the number on its face is not remarkable. However, one cannot conclude that the Georgian legal system is therefore comparable to the West German, British or U.S. system. Different respondents have different expectations of their justice systems, and perception questions from household surveys in particular are not good proxies for the quality of the justice system.

FIGURE 1. GOOD QUALITY JUSTICE?



Percentage of respondents in a 1997 European household survey who find the quality of courts and the justice system “good”.³ (N=16,362)

CORRUPTION IN THE COURTS

On a scale from 0 to 10, lawyers rated corruption in the Georgian government at 8.2, and the level of corruption in the justice sector as 6.94. Judges rated corruption in the Georgian government at 6.32, and the level of corruption in the justice sector as 2.25.⁴ Accordingly both lawyers and judges rate corruption in the justice system as significantly less than corruption in the government.

Notwithstanding the high ratings given for corruption, when lawyers were asked to explain why they lost cases that they should have won according to law, judicial error was cited as the most important factor in losing such cases. Bribery by the opposing side (Sale) was the second most frequently cited reason, and relational corruption the third. See Table 1. Error by the losing lawyer or the skill of the opposing lawyer were listed as the least important factors. This question did not ask about the impact of political corruption.

³ Melich, Anna. Eurobarometer 47.0: Images of Germany, Consumer Issues, Electronic Information, and Fair Trade Practices, Jan.-Feb. 1997 (Computer file). Conducted by INRA (Europe), Brussels. ZA ed. Cologne, Germany: Zentralarchiv für Empirische

⁴ For purposes of these questions, respondents who answered that there is no corruption in the government of Georgia were retained; in the analysis of all other questions, such respondents were dropped as unreliable.

TABLE 1. REASONS WHY LAWYERS LOST CASES

With respect to cases that you should have won according to law but lost, over the last 12 months, how important was each of the listed factors?	Obs	Mean	Std. Dev.
Judge made a mistake	538	6.06	4.18
Opposing lawyer or party bribed judge	516	5.44	4.41
Opposing party was a friend/relative of the judge	497	2.47	3.78
Opposing lawyer was a friend/relative of the judge	504	2.33	3.64
Opposing party or his lawyer got a judge that would be biased against you	496	1.54	3.16
You made a mistake	515	.71	1.98
Lawyer of opposing party was very good	505	.65	1.89

Lawyers' mean responses to question: "With respect to cases that lawyer should have won according to law, but lost, over the last 12 months, how important was each of the listed factors?" (0 insignificant, 10 the only important factor)

Lawyers' reports of corruption levels also varied significantly by court and by region, according to the number of years of professional experience of the lawyer, and according to the lawyer's report on corruption levels in the government of Georgia.

TYPES OF CORRUPTION

Lawyers were asked to rate the frequency of several types of corrupt actions in the court with which they were the most familiar. Table 2 shows the mean lawyers' score for the different types of corruption, along with the standard deviation. Lawyers reported politically-influenced decisions as the most frequent type of corruption, and bribing to change the outcome of a judicial decision as the second most frequent type of corruption. Contrary to what interviewers were told in the qualitative assessment, lawyers surveyed reported relational corruption as only the third most common type of corruption.

It is important to note that while lawyers may have direct knowledge of the frequency of monetary corruption, and possibly relational corruption, it is not clear that lawyers would have knowledge of the frequency of political corruption, which involves a transaction between a judge and a government authority.

TABLE 2. HOW OFTEN DO JUDGES DO SUCH ACTIONS (LAWYERS' REPORT)

How Often Do Judges Do Such Actions? (Lawyers' Report)	Short Name	Mean (out of 10 possible)	Obs	Std. Dev.
Making unfair decision because of pressure of people holding political power	Political	5.35	862	3.77
Accepting bribe to decide case, not in accordance with law, but in such a way that favors bribing parties	Sale	4.48	866	3.64
Making unfair decision because of family/relations	Relational	4.16	860	3.51
Taking bribe to speed up a case	Speed	3.93	857	3.70
Request for bribe to decide the case according to law	Threshold	3.75	867	3.48
Taking bribe to slow down a case	Slow	3.43	854	3.47

Mean of lawyers' response to question, "How often do judges commit such actions? Please rate on a scale from 0 to 10, where 0 means "never", while 10 means "always". Ttests showed the differences in reported level to be significant at the 0.05 level or higher.

Table 3 shows lawyers' answers to similar questions about the behavior of court personnel other than judges. Overall reported levels of corruption are lower for court staff than for judges. Moreover, lawyers report that relational corruption is the most frequent form of corruption among court staff, followed by political corruption, and threshold corruption (charging a fee to do their jobs at all).

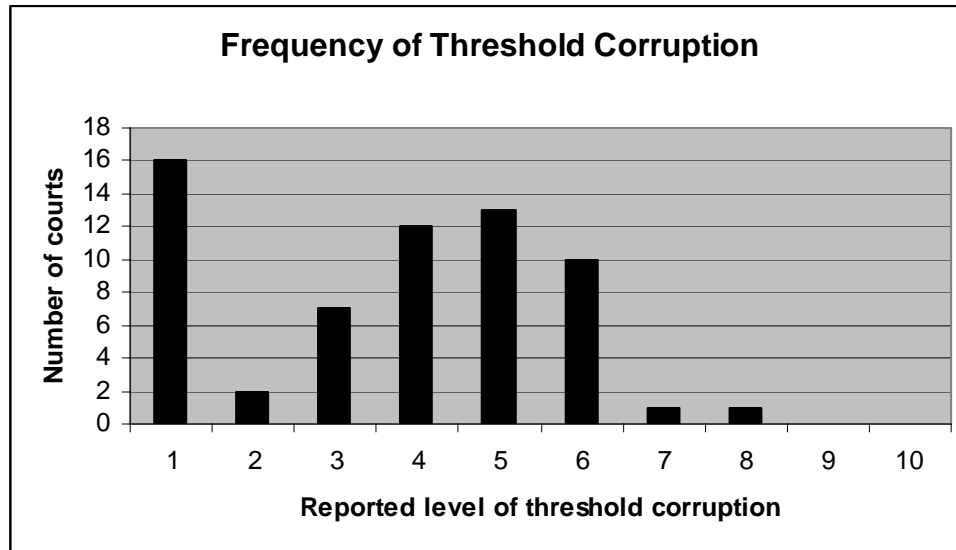
TABLE 3. HOW OFTEN DO COURT STAFF DO SUCH ACTIONS (LAWYERS' REPORT)

How Often Do Court Staff Do Such Actions? (Lawyers' Report)	Short Name	Obs	Mean	Std. Dev.
Use job to do favors for friends and family	Relational	857	4.62	3.68
Use job to do favors for the politically powerful	Political	849	4.55	3.88
Request a bribe for proper execution of duties	Threshold	873	4.09	3.62
Take bribe to speed up case	Speed	857	4.01	3.71
Take bribe for slowing down case	Slow	851	3.67	3.58
Be repeatedly absent from work without permission	Shirk	838	2.76	3.22

Mean of lawyers' response to question, "How often do court personnel (other than judges) commit such actions? Please rate on a scale from 0 to 10, where 0 means "never", while 10 means "always"

An examination of the means disguises substantial variation in reported corruption levels by court, region and type of corruption. For example, while interviewees reported that there were standardized “threshold” fees across courts, surveyed lawyers reported that threshold corruption does not occur in the majority of cases, and the level of threshold corruption varies significantly both across courts and across regions. Lawyers rated the frequency of judicial threshold corruption at seven or higher in only two courts (see Figure 2), and the frequency of court personnel threshold corruption at seven or higher in four courts.

FIGURE 2. FREQUENCY OF THRESHOLD CORRUPTION



Lawyers’ reports of the levels of threshold corruption on a scale from 0 to 10 in different courts.

TABLE 4. HOW OFTEN DO JUDGES DO SUCH ACTIONS? (JUDGES' REPORT)

How Often Do Judges Do Such Actions? (Judges' Report)	Short Name	Obs	Mean	Std. Dev.
Request a bribe to decide a case according to law	Threshold	113	2.45	2.59
Make unfair decision because of pressure of people holding political power	Political	113	2.41	2.68
Make unfair decision because of friends/family relations	Relational	114	2.33	2.6
Take bribe to decide a case in favor of bribing parties	Sale	112	2.19	2.63
Take bribe to speed up case	Speed	112	1.67	2.4
Take bribe to slow down case	Slow	112	1.64	2.27

Mean of judges' response to question, "How often do judges commit such actions? Please rate on a scale from 0 to 10, where 0 means "never", while 10 means "always". The question was asked about other courts in the region.

Judges asked the frequency of each type of corruption by judges and court staff in other courts in the region estimated much lower frequencies than did lawyers. (Table 4 and

Table 5). They also ranked the most frequent types of corruption differently than did lawyers: threshold corruption was reported as the most frequent type of judicial corruption and the second most frequent type of court staff corruption; relational corruption was ranked as the most important type of corruption among court staff. However, judges did rank political corruption as the second most frequent type of corruption among judges.⁵

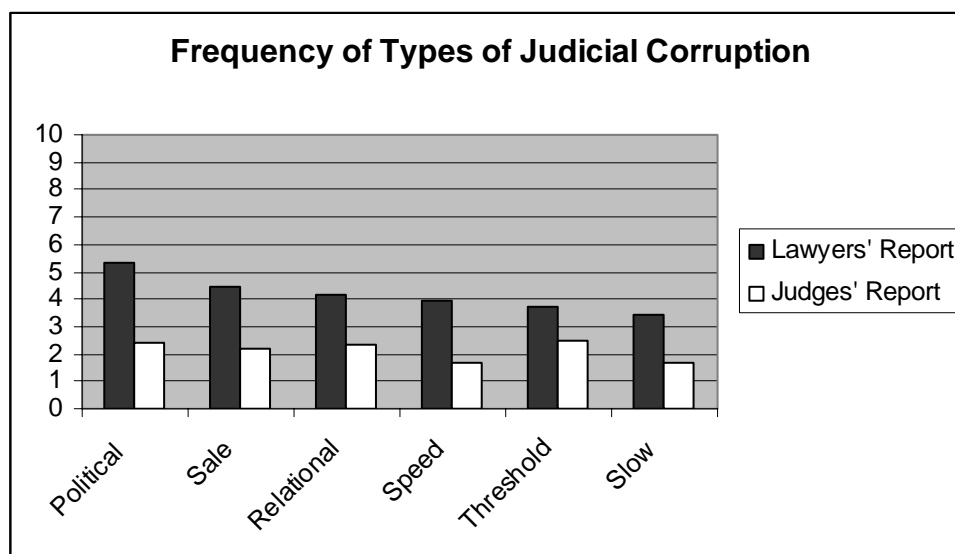
⁵ Unlike lawyers' rankings, many of the rankings of different types of corruption by judges were not significant at the .05 level.

TABLE 5. HOW OFTEN DO COURT STAFF DO SUCH ACTIONS? (JUDGES' REPORT)

How Often Do Court Staff Do Such Actions? (Judges' Report)	Short Name	Obs	Mean	Std. Dev.
Use job to solve problems for friends/family	Relational	106	2.1	2.36
Request a bribe for proper execution of duties	Threshold	105	2.06	2.44
Take bribe to slow down case	Slow	106	1.9	2.4
Take bribe to speed up case	Speed	106	1.9	2.41
Be repeatedly absent from work without permission	Shirk	106	1.8	2.35
Use job to do favors for the politically powerful	Political	106	1.68	2.11

Mean of judges' response to question, "How often do court staff (other than judges) commit such actions? Please rate on a scale from 0 to 10, where 0 means "never", while 10 means "always". The question was asked about other courts in the region.

FIGURE 3. FREQUENCY OF TYPES OF JUDICIAL CORRUPTION

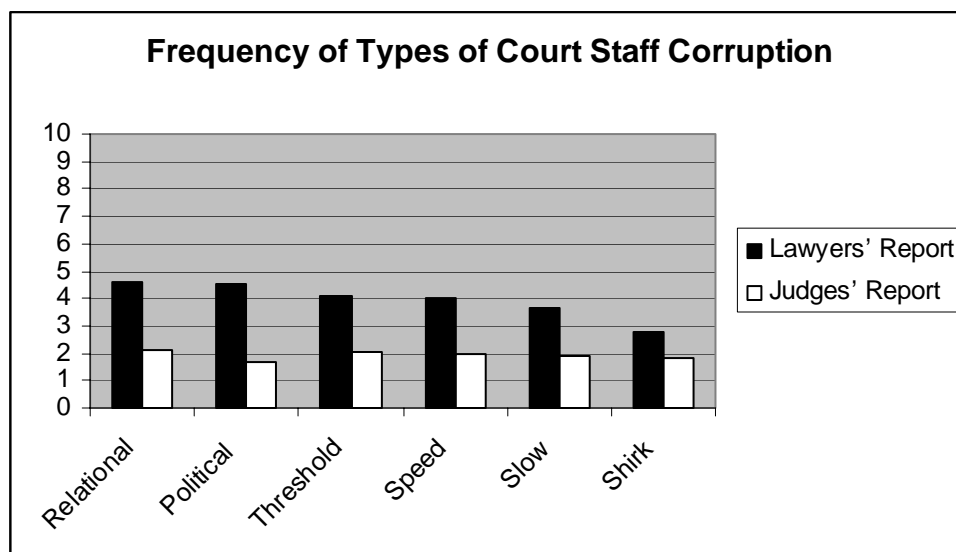


The mean of lawyers' and judges' ratings of the frequency of different types of judicial corruption on a scale from 0-10.

BOTH LAWYERS AND JUDGES REPORT A LOWER LEVEL OF CORRUPTION AMONG COURT STAFF THAN AMONG JUDGES (SEE

Figure 3 and Figure 4), although interviewees reported that judges' assistants and clerks often acted as go-betweens in corrupt transactions. One possible explanation is that interviewees did not consider legal assistants and clerks among court staff.

FIGURE 4. FREQUENCY OF TYPES OF COURT STAFF CORRUPTION



The mean of lawyers' and judges' ratings of the frequency of different types of court staff corruption on a scale from 0-10. Lawyers were asked about the court before which they practice most frequently; judges were asked about other courts in their region.

THE TAPEE FRAMEWORK

Institutional integrity — or the mechanisms to reduce corruption risks — can be summarized as TAPEE (Transparency, Accountability, Prevention, Enforcement and Education).

Corruption, as Robert Klitgaard, has famously and insightfully pointed out, is a crime of calculation and not passion. Hence, the incidence and prevalence of corruption is likely to be governed by the expected costs and benefits of being corrupt (this follows from the economic theory of crime as developed by the Nobel laureate Gary Becker and colleagues). This logic can lead to the derivation of both USAID's TAPEE and Klitgaard's $C=D+M-A$, which are actually quite similar (Box 1 summarizes TAPEE and Box 2 describes its relationship with theory and Klitgaard's formula). TAPEE is based on an augmented cost-benefit framework, and explicitly allows for the role of values in limiting corruption.

The gains from corruption are likely to depend on the discretion and monopoly that officials have. A highly regulated economy offers more opportunity to demand bribes, and the lack of competing officials who can provide the same licenses also increases the amount that can be demanded. Thus reducing discretion and monopoly can reduce corruption. This corresponds to **Prevention** in TAPEE. Other components of prevention include rightsizing the civil service, some privatization, and separating citizens from public officials (having electronic filing of applications

so no face-to-face contact is made, preventing practicing judges from having private practices etc).

Accountability refers to rules specifying the relationships between public officials' behavior and performance, and rewards and punishments. It includes both punishments for corruption, and incentives based on the quality of service delivery. Vertical accountability, like transparency and enforcement, can be thought of in two dimensions, between voters and politicians and between politicians and bureaucrats. In a multi-layer principal-agent relationship, as exists between voters and public officials, increasing the effectiveness of one layer can be unproductive or even counter-productive if the other layer is not functioning well. For instance, improving the ability of elected officials to fire civil servants can backfire if improprieties in the political system lead to the politicians being corrupt. Horizontal accountability applies between different agencies or branches of the government, similar to the well-known notion of "checks and balances."

It is important to include rewards and punishments based on the quality of service delivery in an anti-corruption strategy, even if no corruption is observed or can be clearly inferred. The fundamental insight of principal-agent theory is that it is possible to motivate the agent to undertake the action optimal for the principal even if the action cannot be observed, and taking the action optimal for the principal is not in the agent's interest. The proper motivation can be provided by holding the agent accountable for outcomes. Indeed, this can be done even if events outside the agent's control may also have affected the outcomes. For many kinds of corruption, where negligence is difficult to disentangle from corruption—like shirking, or bribes for ignoring tax evasion—the provision of incentives or clear performance standards can be an effective deterrent: indeed, this might be more effective at reducing corruption than attempting to increase the amount of transparency and enforcement in terms of the actual observation and punishment of corrupt behavior. It is important to emphasize that criminal sanctions are inappropriate and violate the rule of law without proof of corruption, and only administrative sanctions (fines, transfers, suspensions and dismissals) should be used to punish poor performance. Ultimately, enforcement has to be present for accountability to have an impact.

The expected costs of corruption depend on the probability of being caught and the probability and severity of the punishment once the official is caught. The probability of being caught refers to **Transparency** in TAPEE, and the probability of punishment to **Enforcement**. Like accountability, transparency and enforcement both need to be decomposed into political and administrative components to be meaningfully analyzed.

In addition to "TAPE", another factor can also be a determinant of the level of corruption. This is variously referred to as "**Education**", "Awareness", or "Values". In many contexts people do undertake actions that are not in their interest if they serve some broader public good. Such behavior can lead to the control of corruption. Thus, even if changing human nature seems difficult, a focus of values might lead to policy advice like reducing the barriers to entry into public service of relatively virtuous sections of the population. Because selection as much as education can affect the values of public officials, it might be better to rename "Education" as "Values."

BOX 1. THE TAPEE CRITERIA

USAID has identified five main disciplines that can prevent corruption. These components of integrity are Transparency, Accountability, Prevention, Enforcement and Education. These variables can be defined as follows.

- T = Transparency: Refers to the ability of citizens, public officials and civil society organizations to detect whether public officials are in compliance with the rules and standards defined in Accountability. Transparency can be usefully decomposed into substantive transparency, i.e., supervisors knowing the behavior of their subordinates and procedural transparency, i.e., the involvement of stakeholders in the process of decision making. Reporting requirements can reasonably be thought of as either transparency or accountability.
- A = Accountability: Refers to rules that set standards both on avoiding corruption and specify punishments, and rules that set standards for service delivery and performance and specify rewards or punishments for meeting or failing to meet standards. Vertical accountability can be usefully decomposed into the ability of superiors to reward or punish their subordinates, and the ability of voters to punish and reward politicians. Horizontal accountability means the right of government agencies or branches to monitor, criticize, and even change the actions of another agency or branch.
- P = Prevention: Refers to the systemic reform of institutions so as to decrease opportunities for corruption. This includes reducing monopoly and discretion, rightsizing the civil service, and reducing contact between private and public actors.
- E = Enforcement: Refers to whether the rules defined in accountability are enforced once they are detected. This includes criminal sanctions for corruption, and administrative sanctions for negligence, or poor performance. The presence and effectiveness of anti-corruption agencies, ombudsmen and auditors can be thought of as components of enforcement. There are obvious complementarities between enforcement, transparency and accountability.
- E = Education/Values: Refers to the intrinsic motivations of public officials to avoid corruption even when a simple cost-benefit analysis would induce them to be corrupt.

Finally, it might be possible to affect attitudes towards corruption by demonstrating just how harmful it is. For instance, results showing the effects of corruption on health and education outcomes (Azfar 2002), environmental quality, or human trafficking (Azfar and Lee 2003), may galvanize civil society to act against corruption.

BOX 2. CONTROLLING CORRUPTION

Theoretical analysis of gains and losses from corrupt behavior lead to both Klitgaard's formula ($C=M+D-A$) and USAID's TAPEE framework.		
Theoretical analysis	Klitgaard	USAID
Potential gains from Corruption	Monopoly	Prevention
	Discretion	
Expected costs of corruption	Accountability	Transparency
		Accountability
		Enforcement
Values		Education/Values

TAPEE Results

For each type of judicial and court staff corruption, judges were asked how disturbing the judge found those actions (Values), the likelihood that a person committing the act would be observed (Observed), the likelihood that a person who is observed would be reported (Reported), the likelihood that a person who is reported will be punished (Punished), and the strictness of the punishment (Strict). Table 6 and Table 7 show the mean responses of judges to these questions averaged across all types of corruption. The Tables also list the corresponding TAPEE factor for each question. Judges were also asked how many of their colleagues were so honest that they wouldn't do such actions even if it were guaranteed that they wouldn't get caught (SoHonest). Judges rated their colleagues at 5.4 out of a 10 point scale, where 10 meant "everyone is like this."

The probabilities that judges assigned to being observed, reported and punished are very high. Interviewees told us, however, that the disciplinary procedure for judges is problematic, and so it seems unlikely that most corruption is detected and punished. Moreover, the variation in judges' responses about TAPEE factors by court or by type of corruption was, for the most part, not statistically significant at the .05 level. Because TAPEE variables do not vary significantly among courts, it is not clear whether TAPEE factors can be used to explain variations in corruption levels among courts.

There are several possible explanations for the lack of variation in TAPEE factors. One is that the likelihood of observation and punishment, among other TAPEE factors, does not vary significantly across courts. Another possibility is that judges do not know, or cannot tell, the true percentages. Appendix A shows the results of regressing TAPEE factors on the corruption level, and explores the relationship between reported corruption levels and reported TAPEE factors.

For both judges and court staff, however, judges reported a lower probability that those observed engaged in corrupt acts would be reported, compared to the probability that they would be observed, or that they would be punished if reported. In other words, reporting corrupt acts seems less likely than either observing corrupt acts or being punished if the act is reported. Reporting may be the weakest link in the chain of integrity. It may be worth exploring further the relative difficulty of reporting corrupt acts.

TABLE 6. TAPEE FACTORS FOR JUDGES

TAPEE Factors for Judges	TAPEE Concept	Short Name	Obs	Mean	Std. Dev.
If any of your colleagues committed such actions, how disturbed would you be by the fact?	Values	Values	141	8.25	2.244
In case any of your colleague judges committed such an action, how likely is it that he would be observed by someone who could report him to the appropriate authorities?	Transparency	Observed	135	6.54	2.817
How likely is it that this person would really report this action to the appropriate authorities?	Transparency	Reported	138	5.86	3.021
How likely is it that the lawbreaker would really be punished?	Enforcement	Punished	141	7.69	2.341
According to the law, how strict would the punishment be for such an action?	Accountability	Strict	136	7.65	2.201
How many of your colleague judges are so honest that they wouldn't commit such actions even if they were guaranteed that no one would find out about them?	Values	SoHonest	146	5.44	4.008

Judges' mean responses to questions asked about different types of corruption by judges, averaged across the types of corruption. Each question was asked on a 0 to 10 scale, 10 high.

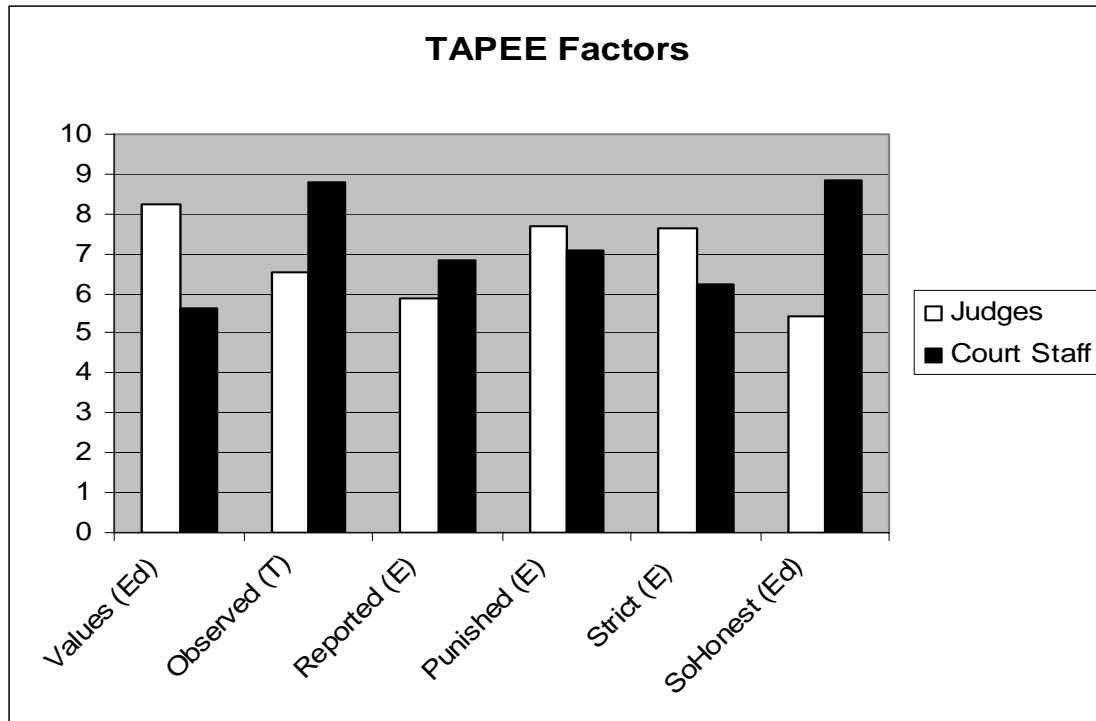
TABLE 7. TAPEE FACTORS FOR COURT STAFF

TAPEE Factors for Court Staff	TAPEE Concept	Short Name	Obs	Mean	Std. Dev.
If any of your colleagues committed such actions, how disturbed would you be by the fact?	Values	Values	145	5.64	4.05
In case any of your colleague judges committed such an action, how likely is it that he would be observed by someone who could report him to the appropriate authorities?	Transparency	Observed	146	8.77	2.092989
How likely is it that this person would really report this action to the appropriate authorities?	Transparency	Reported	141	6.81	2.93
How likely is it that the lawbreaker would really be punished?	Enforcement	Punished	138	7.11	2.19
According to the law, how strict would the punishment be for such an action?	Accountability	Strict	138	6.21	2.95
How many of your colleague judges are so honest that they wouldn't commit such actions even if they were guaranteed that no one would find out about them?	Values	SoHonest	147	8.85	1.82

Judges' mean responses to questions asked about different types of corruption by court staff, averaged across the types of corruption. Each question was asked on a 0 to 10 scale, 10 high.

Judges' answers regarding TAPEE factors for court staff were significantly different than the answers they gave for judges. (Figure 5) Judges expressed far greater confidence in the honesty of court staff, at the same time that they indicated that judges would be less outraged by corrupt activities on the part of court staff. A key to the different levels of concern regarding corrupt activities by court staff and judges may be judges' evaluations of the adequacy of the official salaries of judges and staff. Asked to rate the adequacy of the salaries of judges and court staff on a scale from 0 to 10, judges rated judicial salaries at 3.29 and court staff salaries at 2.9.

FIGURE 5. TAPEE FACTORS

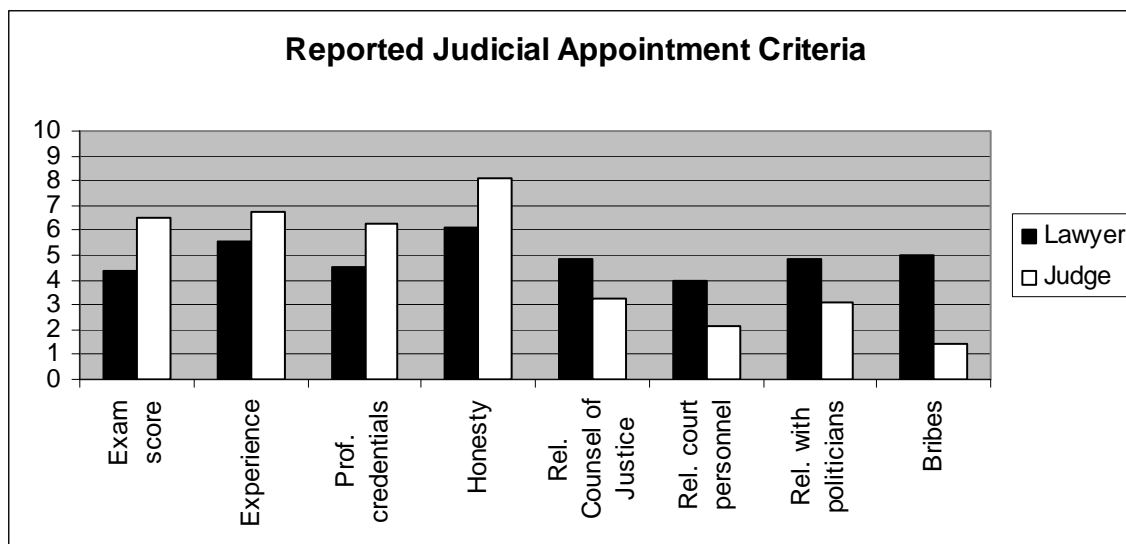


Judges' mean responses, aggregated across types of corruption, for TAPEE factors for judges and other court staff for their own courts.

APPOINTMENT, PROMOTION AND DISCIPLINE OF JUDICIAL PERSONNEL

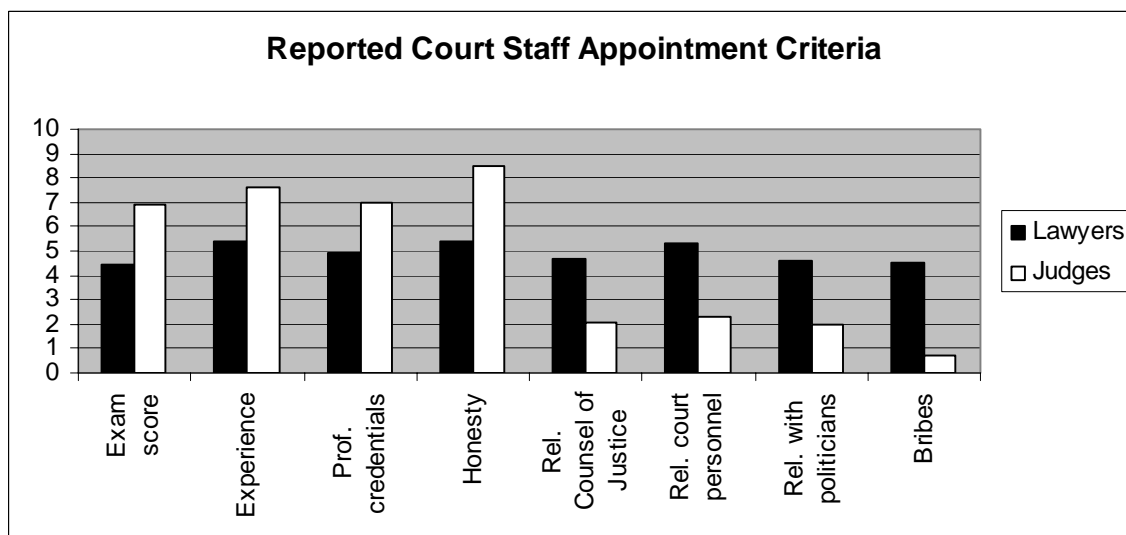
A number of questions in the survey focused on the appointment and promotion of judicial personnel. The method of appointment and promotion of personnel is important for two reasons. First, the judiciary has given substantial attention to improving recruitment in order to improve the caliber of judges. Second, non-transparent appointment and promotion procedures facilitate the establishment of entrenched corruption hierarchies. Where employees must buy their positions, they do so expecting to recoup their expenditures through rent seeking. Where employees must lease their positions, they do so with the understanding that they will generate illegal rents as part of their continued employment. Where employees are hired as a personal favor by a patron, they understand that they are expected to repay this favor through services.

FIGURE 6. IMPORTANCE OF FACTORS IN APPOINTMENT OF JUDGES



Judges' and lawyers' ratings of the importance of various judicial appointment criteria on a scale from 0 to 10.

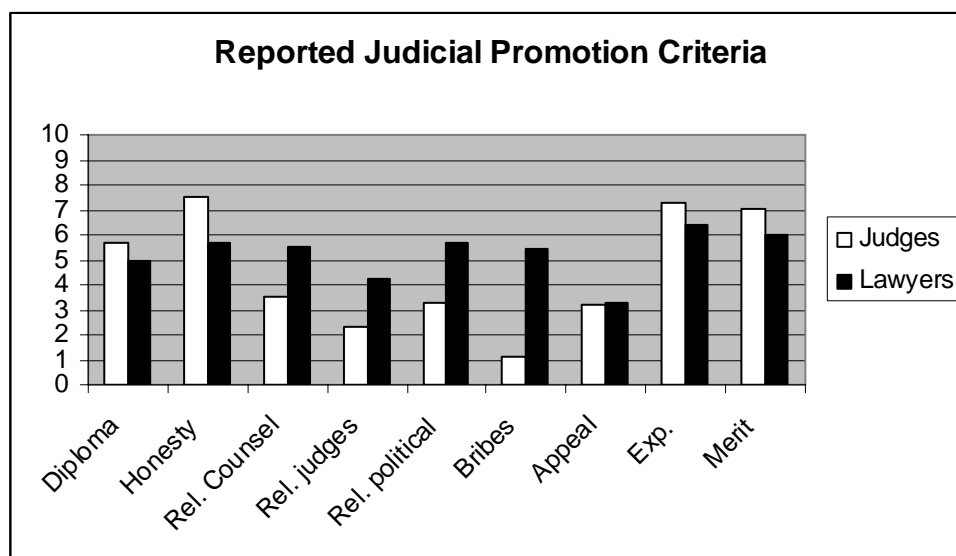
FIGURE 7. REPORTED COURT STAFF APPOINTMENT CRITERIA



Judges' and lawyers' ratings of the importance of various court staff appointment criteria on a scale from 0 to 10.

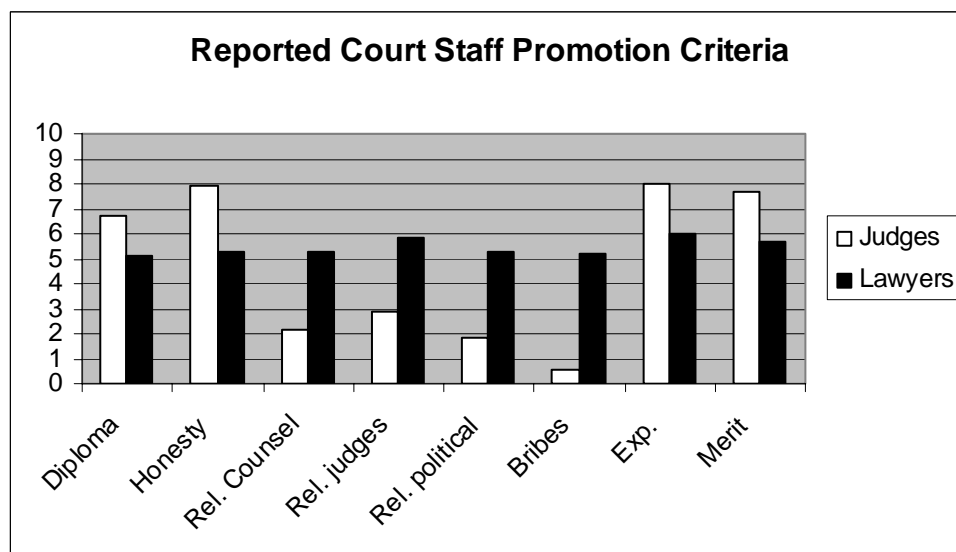
When asked what criteria are most important in appointing judges, judges answered that merit (exam score, experience, professional credentials, personal reputation) is more important than political influence or bribery. Lawyers gave much stronger weight to non-meritocratic factors (relationships with Counsel of Justice members, court personnel and politicians, and bribery). But both lawyers and judges agreed that a reputation of honesty and fearlessness was the single most important criterion in the appointment of judges, with professional experience as the second most important criterion. (Figure 6)

FIGURE 8. REPORTED JUDICIAL PROMOTION CRITERIA



Judges' and lawyers' ratings of the importance of various judicial promotion criteria on a scale from 0 to 10.

FIGURE 9. REPORTED COURT STAFF PROMOTION CRITERIA



Judges' and lawyers' ratings of the importance of various court staff promotion criteria on a scale from 0 to 10.

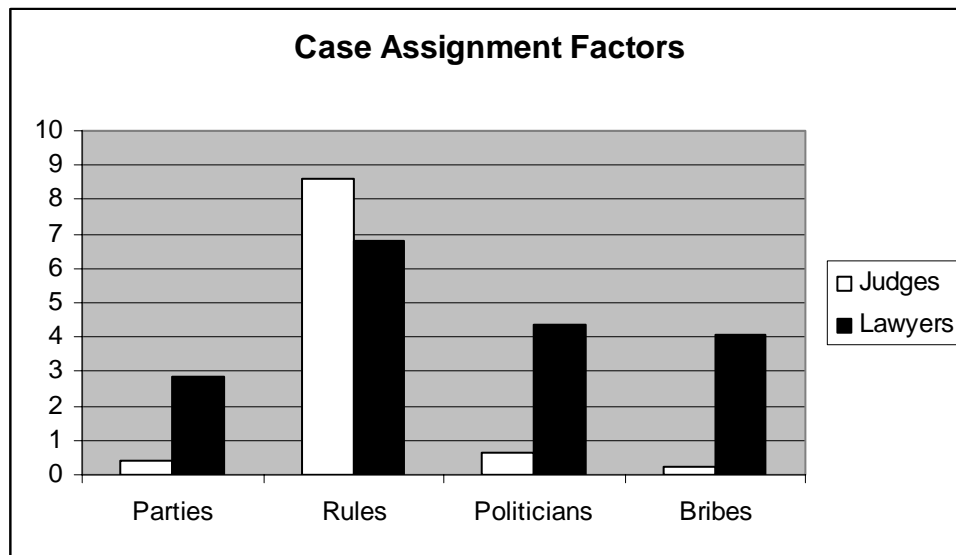
With respect to the appointment of court staff, again, judges put the emphasis on meritocratic factors (reputation, professional credentials, experience, exam score), while lawyers put a much greater weight on non-meritocratic factors (personal relationships, bribes). However, both lawyers and judges agree that a reputation for honesty and fearlessness is the most important criterion, and professional experience is the second most important criterion. (Figure 7)

Judges and lawyers were also asked about the criteria for promotion for judges and court staff. (Figure 8 and Figure 9) Again, lawyers put a heavier weight on non-meritocratic factors such as personal relations and bribes. However, lawyers rate experience as the most important promotion criterion for judges and judges rate honesty as the most important. For court staff, judges rate honesty and experience as the most important criteria for promotion. Lawyers rate the staff persons' relationship with the judge and experience as the most important criteria. It is not clear that lawyers would have information about how court staff are promoted.

CASE ASSIGNMENT

Interviewees described a pyramidal structure of judicial corruption during the Soviet era in which lower court judges shared bribes with higher court judges in order to ensure that a corrupt judgment was not overturned on appeal and to increase the value of the proffered service. Such a pattern of corruption necessarily implies corruption in case assignment. Corrupt judgments on appeal must be steered to bribe-accepting appellate judges. We asked both lawyers and judges to tell us the relative importance of various

FIGURE 10. CASE ASSIGNMENT FACTORS



Judges' and lawyers' ratings of the importance of factors in case assignment on a scale from 0 to 10.

factors in determining how cases are assigned to judges: pressure from parties, official rules, pressure from politicians, or bribes. Discretionary assignment procedures open the door to this kind of cross-level sharing. Figure 10 shows the responses of judges and lawyers. Both replied that the official rules are the most important determinant of how cases are assigned. However, lawyers gave substantial importance to "improper" determinants of case assignment.

IV. CONCLUSIONS

This study allowed a detailed look at corruption levels and TAPEE factors within the Georgian court system, focusing on civil litigation.

Lawyers asked to rank their confidence in their answers regarding corruption levels on a scale of 0 to 10 gave a confidence ranking of 7.24. If lawyers are to be believed, there is a high level of corruption in the justice system as a whole, and political corruption is the most frequently encountered type of corruption. Improper considerations also affect the recruitment and promotion of both judges and court staff, as well as case assignment. But one of the difficulties of drawing factual conclusions about corruption or TAPEE factors from this study is that lawyers' and judges' reports differ widely. While judges may decline to report corruption levels honestly, it may also be the case that lawyers exaggerate corruption levels, blaming corruption for lost cases rather than poor legal skills or error. However, we found the reports from lawyers regarding corruption levels in particular courts to be internally consistent, lending credence to their reports; and the source of information that lawyers cite most frequently is their own experience.

Substantial variation in reported corruption levels across regions and courts suggests that judicial corruption is not fully systematized, but may be systematized at the level of certain courts.

While lawyers and judges rate corruption in the government as higher than corruption in the justice system, lawyers nevertheless report a high level of corruption in the justice system. This could warrant attention because of the essential role that the justice system plays in assuring the legality of the actions of government actors.

Within civil litigation, lawyers signaled political corruption and the sale of judgments as the two most important problems. Judges' reports on TAPEE factors, however, do not vary per type of corruption, and judges report a high level of observation, reporting and punishment for all types of corruption. This does not point to particular weaknesses that USAID could focus on and address. While lawyers point to non-meritocratic factors in judicial hiring and promotion, it is not clear whether lawyers would have any direct knowledge of these processes; judges report that non-meritocratic factors are much less of a problem.

The fact that lawyers gave coherent responses to questions regarding corruption levels in the courts suggests that similar surveys could be conducted at a later date to benchmark the level of corruption. However, the lack of systematic variation in the TAPEE factors by court may mean that TAPEE factors do not vary per court, or that judges cannot reliably estimate the probabilities of being observed, reported and punished.

Implications for reform. Reforms can be thought of as encompassing two distinct elements: the substance of the reforms, and the process by which the reforms were identified and implemented. Increasingly, development practitioners and scholars agree that external diagnoses can lack critical insights that insiders can provide. And when it comes to implementation, imposed reforms are likely to be superficial. The process of reform must be one to which participants wholly subscribe – this is sometimes called “ownership.” At the same time, external participants in dialogues about reform may be able to spot aspects of the problem that those close to it don't see, or they can raise politically difficult points that would be avoided if the dialogue were restricted to insiders.

Because the process of identifying and implementing reforms is as critical to reform success as the identification of the steps to be taken, we recommend that specific reforms be identified in dialogue with the stakeholders, including justice system actors and beneficiaries. The insights from this assessment should not serve as the basis for writing prescriptions, but should be raised in dialogue.

The ability to identify key points is compromised by the unreliability of the judges' data. Nevertheless there are a number of points that surfaced that might usefully contribute to a reform dialogue. In particular, discussions of judicial reform might address the following topics:

- In this survey, lawyers reported political corruption as the most problematic. What is the role of political corruption in the judiciary? How might it be reduced? Would clarifying the criteria for judicial promotion help?
- In this survey, lawyers had a much more negative view of corruption in the judiciary than the judges do. Why do lawyers and judges have such different perceptions of corruption in the justice system?
- In this survey, judges varied radically in their opinions regarding corruption and TAPEE factors in the system. Why do different judges differ so much in their perceptions of corruption in the justice system?
- In this survey, judges reported a lack of transparency in criteria for promotion. How can the process of promotion in the judiciary be made more transparent?
- In this survey, lawyers reported that corruption levels vary substantially from court to court. What is responsible for this difference?

This assessment may be repeated periodically to give insight into changing trends in judicial corruption. However, the problem of inconsistent judges' answers must be resolved. We are currently awaiting the results from other pilot studies before determining whether the problem is inherent to the survey instrument or particular to Georgia.

Appendix A. How Does Georgia Rate on Corruption?

Concept	Source	Definition	Georgia "score"	Points of Comparison	Summary
Control of corruption	Kaufmann, Kraay, and Mastruzzi (2003)	Success in controlling corruption. Scores are estimated for 199 countries. The distribution of scores approximates a standard normal distribution. Higher scores indicate less corruption.	-1.03 (on a mean 0, 1 standard deviation scale)	Russia = -0.9 Kazakhstan=-1.05 Lithuania=0.25 Azerbaijan=-1.07 Eastern Europe = -0.06 FSU = -0.67	Georgia fares badly on this measure even compared to the FSU. Constructed by aggregating ratings from various sources (polls of experts and surveys of businesspeople).
Regulatory quality	Kaufmann, Kraay, and Mastruzzi (2003)	Regulatory quality includes the incidence of market-unfriendly policies as well as perceptions of the burdens imposed by excessive regulation in business development. Higher scores indicate better quality.	-0.82 (on a mean 0, 1 standard deviation scale)	Russia = -0.30 Kazakhstan=-0.74 Lithuania=0.17 Azerbaijan=-0.82 Eastern Europe = 0.29 FSU = -0.36	Georgia scores poorly on this measure.
Rule of law	Kaufmann, Kraay, and Mastruzzi (2003)		-1.17 (on a mean 0, 1 standard deviation scale)	Russia= -0.78 Lithuania=0.48 Kazakhstan=-0.90 Azerbaijan=-0.79 Eastern Europe=0.05 FSU=-0.61	Georgia scores poorly on this measure.

Concept	Source	Definition	Georgia "score"	Points of Comparison	Summary
State intervention	Hellman et al (2000)	Percent of firms responding “frequently” or more to the question on how often the state directly intervenes in investment, employment, sales, prices, mergers, dividends and wages.	10.3% of firms	Russia = 11.5 Kazakhstan=14.1 Lithuania=13.2 Azerbaijan=9.8 Eastern Europe = 15.64 FSU = 14.56	
Administrative corruption	Hellman, Jones and Kaufman (2000)	Average estimated proportion of revenues typically paid by firms to state officials in order to “get things done” (e.g., licenses, tax collection, connection to public services)	4.3% of revenues	Russia = 2.8 Kazakhstan= Lithuania=2.8 Azerbaijan=5.7 Eastern Europe = 2.2 FSU = 3.7	Georgia scores high on this measure. Administrative corruption is “the extent to which firms make illicit and non-transparent private payments to public officials in order to alter the prescribed implementation of administrative regulations placed by the state on the firm’s activities.”
Capture economy index	Hellman, Jones and Kaufman (2000)	The percentage of firms declaring a significant or very significant impact of corruption in influencing laws and policies (parliamentary legislation, presidential decrees, central bank, criminal courts, commercial courts, and party finance).	24% of firms	Russia = Kazakhstan=32 Lithuania=11 Azerbaijan=41 Eastern Europe = 17 FSU = 21.46	Transition countries fall into two groups: low capture (most and least advanced reformers) and high capture (partial reformers). Georgia is a high-capture country. Based on the 1999 Business Environment and Enterprise Performance Survey (BEEPS). Averages taken across firms, not weighted.

Concept	Source	Definition	Georgia "score"	Points of Comparison	Summary
Freedom House Governance ratings	Freedom House (2004)	An overall rating of governmental quality, capturing stability, legislative and executive transparency; the ability of legislative bodies to fulfill their responsibilities, decentralization of power, and the freedom of the civil service from excessive political interference and corruption.	5.75 on a 1-to-7 scale, with 1 being highest	Russia = 5.25 Kazakhstan=6.25 Lithuania=2.50 Azerbaijan=5.75 Eastern Europe = 3.29 FSU = 5.13	Georgia's rating has declined from a 4.50 in 1999,
Freedom House Constitutional, Legislative, and Judicial Framework ratings	Freedom House (2004)	Measures constitutional framework for protecting rights (including business and property rights), equality before the law, treatment of suspects and prisoners, judicial independence, and compliance with judicial decisions.	4.50 on a 1-to-7 scale, with 1 being highest	Russia = 4.75 Kazakhstan=6.25 Lithuania=1.75 Azerbaijan=5.50 Eastern Europe = 3.21 FSU = 4.82	
Ranking of corruption	Gray et al (2004)	Average over firms of their ranking of corruption among 22 obstacles of conducting business	5	Russia = 11 Kazakhstan=7 Lithuania=7 Azerbaijan=5 Eastern Europe = 7 FSU = 8	Corruption appears to be a significant problem in Georgia. (Lower values denote a higher importance of corruption.) From the BEEPS2 sample data (2002)

Concept	Source	Definition	Georgia "score"	Points of Comparison	Summary
Index of Economic Freedom	Miles et al. (2004)	An aggregation of 50 variables capturing trade policy, fiscal burden of government, government intervention in the economy, monetary policy, capital flows and foreign investment, banking and finance, wages and prices, property rights, regulation, and informal market activity.	3.19 on a 1 to 5 scale, with 1 best	Russia = 3.46 Kazakhstan=3.70 Lithuania=2.19 Azerbaijan=3.39 Eastern Europe = 2.93 FSU = 3.30	Georgia ranks 91 in the world and poorly within Europe. (Higher scores show a greater level of government interference in the economy.) 2002-2003. Economic freedom = “the absence of government coercion or constraint on the production, distribution, or consumption of goods and services beyond the extent necessary for citizens to protect and maintain liberty itself.”
Size of shadow economy	Schneider and Klinglmaier (2004)	The ratio of informal economy to total GDP, in percentage points.	67.3%	Russia = 46.1 Kazakhstan=43.2 Lithuania=30.3 Azerbaijan=60.6 Eastern Europe = 29.0 FSU = 46.1	Estimates of the size of the shadow economy are produced using indirect econometric methods. The estimates are for 1999/2000.
Fairness of Court System	World Bank (2002)	Percentage of respondents who never associate the courts with fairness and impartiality.	32.1%	Russia = 26.9 Kazakhstan=27.8 Lithuania=14.1 Azerbaijan=42.7 Eastern Europe=12.8 FSU=22.5	

Concept	Source	Definition	Georgia "score"	Points of Comparison	Summary
Honesty of Court System	World Bank (2002)	Percentage of respondents who never associate the courts with honesty.	34.9%	Russia = 29.0 Kazakhstan=29.2 Lithuania=18.4 Azerbaijan=43.4 Eastern Europe=14.5 FSU=25.1	
Quickness of Court Systems	World Bank (2002)	Percentage of respondents who never associate the courts with quick decisions.	39.9%	Russia = 39.9 Kazakhstan=27.4 Lithuania=26.2 Azerbaijan=31.7 Eastern Europe=36.2 FSU=30.9	
Affordability of the Court System	World Bank (2002)	Percentage of respondents who never consider the courts affordable.	29.9%	Russia = 19.7 Kazakhstan=18.0 Lithuania=16.6 Azerbaijan=27.7 Eastern Europe=13.6 FSU=16.6	

Concept	Source	Definition	Georgia "score"	Points of Comparison	Summary
Ability of Courts to Enforce its decisions	World Bank (2002)	Percentage of respondents who never consider the courts to be able to enforce its decisions.	30.3%	Russia=18.3 Kazakhstan=17.8 Lithuania=16.1 Azerbaijan=29.1 Eastern Europe=9.6 FSU= 15.1	
Unofficial payments to courts to influence criminal court cases	World Bank (2002)	Percentage of respondents who claim that private payments/bribes had no impact on decisions in criminal courts.	71.3%	Russia=87.8 Kazakhstan=88.6 Lithuania=80.8 Azerbaijan=80.3 Eastern Europe=77.0 FSU=77.1	
Unofficial payments to courts to influence commercial court cases	World Bank (2002)	Percentage of respondents who claim that private payments/bribes had no impact on decisions in commercial courts.	70.1%	Russia=81.9 Kazakhstan=84.3 Lithuania=79.3 Azerbaijan=79.0 Eastern Europe=71.8 FSU=72.7	

Concept	Source	Definition	Georgia "score"	Points of Comparison	Summary
Unofficial Payments to the Courts	World Bank (2002)	Percentage of respondents who never make unofficial payments to the courts	57.1%	Russia=80.8 Kazakhstan=76.2 Lithuania=85.2 Azerbaijan=87.2 Eastern Europe=69.9 FSU=71.7	
Courts as an obstacle to operation and growth of firms	World Bank (2002)	Percentage of respondents who consider the judiciary a major obstacle to the operation and growth of your business	11.2%	Russia=9.5 Kazakhstan=4.0 Lithuania=12.0 Azerbaijan=4.4 Eastern Europe=16.3 FSU=9.9	
Legal Formalism	Djankov et al (2003)	Measures the extent of formal procedures necessary to resolve disputes (Lower Numbers imply less formalism)	3.51	Russia=3.32 Kazakhstan=4.00 Lithuania=4.21 Azerbaijan= Eastern Europe=4.08 FSU=3.89	

Concept	Source	Definition	Georgia "score"	Points of Comparison	Summary
Confidence in Legal System	World Bank (2002)	Percentage of respondents who strongly agree with the following statement: "I am confident that the legal system will uphold my contract and property rights in business disputes".	3.5%	Russia=2.7 Kazakhstan=4.4 Lithuania=5.3 Azerbaijan=18.7 Eastern Europe=6.4 FSU=6.7	

Notes:

1. Eastern Europe = Average of all former communist (or socialist) countries in Central and Eastern Europe, for which data was available. If estimates are available for fewer than five countries, no Eastern European average is given.
2. FSU = Average of all the countries that were formerly part of the Soviet Union. If estimates are available for fewer than five countries, no FSU average is given.

Appendix B. Regressions

1. Explaining Judicial Corruption

TAPEE Concept	Variable	(1)	(2)	(3)	(4)
		Corrlevel	corrlevel	corrlevel	corrlevel
Values	jvalues	-0.10	-0.06	-0.00	0.04
		(1.35)	(0.63)	(0.01)	(0.33)
Transparency	jobserved	-0.09821	-0.09014		
		(1.12)	(1.42)		
Transparency	jreported	-0.22	-0.19		
		(2.06)*	(2.06)*		
Enforcement	jpunished	0.13	0.05		
		(0.94)	(0.41)		
Accountability	jstrict	0.07	0.13		
		(1.09)	(1.97)+		
Values	jsohonest	0.08	0.10	0.09	0.10
		(1.93)+	(2.36)*	(1.95)+	(2.11)*
	region==2	1.60		1.96	
		(2.38)*		(3.34)#	
	region==3	0.95		0.50	
		(1.48)		(0.74)	
	region==4	0.00		0.00	
		(.)		(.)	
	region==5	-1.55		-1.54	
		(2.10)*		(2.05)*	
	region==6	0.11		1.24	
		(0.14)		(1.51)	
	region==7	1.55		1.60	
		(3.33)#		(2.81)#	
	region==8	0.81		1.57	
		(1.51)		(3.40)#	
	region==9	1.03		1.20	
		(1.69)+		(2.48)*	
	region==10	1.53		2.00	

		(1.77)+		(2.69)*	
	logpop	0.89	0.48	0.92	0.39
		(4.42)#	(6.32)#	(4.39)#	(4.44)#
	Experience	-0.06	-0.06	-0.06	-0.06
		(4.95)#	(5.26)#	(4.83)#	(4.74)#
	Corruption in Georgia	0.15	0.14	0.16	0.16
		(2.20)*	(1.98)+	(2.36)*	(2.30)*
	Observed*Reported*Punished*Strict			-0.00009	-0.00013
				(2.13)*	(2.61)*
	Constant	-7.85	-2.63	-9.56	-2.45
		(2.65)*	(1.83)+	(3.25)#	(1.58)
	Observations	694	694	694	694
	R-squared	0.11	0.09	0.10	0.07

Robust t statistics in parentheses

* Significant at 5%; # significant at 1%

Discussion

Table A.1 shows the results of four regressions run to explain the judicial corruption levels reported by lawyers, with the errors clustered by court. Lawyers' reports of corruption in a particular court were regressed against the average judicial report of TAPEE factors for the court. The variables "jvalues", "jobserved", "jreported", "jpunished", "jstrict" and "jsohonest" are averages of the TAPEE factors for the various corruption types. The variable "obrep" is the average of observed*reported*punished for each corruption type, which we interpret as the probability of being punished. Regressions (1) and (2) show results if the conditional probability of being observed, reported and punished are treated separately; regressions (3) and (4) show the results if the overall probability of being punished is used. Although it is not typical to run a regression on an interaction term without including the principal terms, we believe that in this case there is a strong theoretical justification, as there is no reason to think that being observed by itself – without any further negative consequence – would dissuade corruption.

Variables "region=2" to "region=10" are dummy variables that reflect the region in which the court is located. Regressions (1) and (3) show the results of regressions run including region as an independent variable; regressions (2) and (4) show regressions run without controlling for region.

"Logpop" is the log of the population. "Law_exp" is the years of practice experience of the lawyer reporting a corruption level. "Gov_corr" is the lawyers' response to a question asking the lawyer to rate the level of corruption in the Georgian government.

As previously mentioned, we believe that the judges' TAPEE factors were not well measured. The answers did not vary significantly by court, or by type of corruption. A more detailed discussion of this data will be found in the Companion Paper. Nevertheless, we felt that we should run the regressions on the assumption that judges' reports of TAPEE factors reflect the

judges' own perceptions and expectations, whether or not they reflect local probabilities. After all, it is the judge's expectation of the likelihood of punishment that should influence his or her behavior more than the actual likelihood of punishment.

When TAPEE factors enter the regression separately, as in regressions (1) and (2), the results are uneven. "Jvalues", which is a self-report of how disturbed the judge would be by a corrupt act by a colleague, is not significant. "Joberved", which is the reported likelihood that a judge committing such an act would be observed, is not significant. "Jreported," which is the reported likelihood that a person, once observed, would be reported, is significant with the expected sign. Where the likelihood of being reported is higher, the corruption level is lower. "Jpunished," which is the reported likelihood that a judge, once reported, would be punished, is not significant.

When "obrepust", the expected cost of punishment (overall likelihood of being observed, reported and punished times the strictness of the punishment), enters the regression instead (see regressions (3) and (4)), it is significant with the expected sign. The greater the likelihood of being observed reported and punished, the lower the corruption levels.

"Joshonest", which is the reported percentage of colleagues who are so honest that they would not commit a corrupt act even if there were not chance of getting caught, is significant, but with an unexpected sign. We would expect that the more honest colleagues a court has, the lower the corruption level; but this does not seem to be the case here.

A number of the regional variables are significant, indicating statistically significant regional variations in corruption levels. An example of such factors might be the poverty or wealth of a region, or the existence of a tight clan system that would facilitate relational corruption.

The log of the population density of the rayon in which the court is located ("logpop") is statistically significant and the impact of population is comparatively large compared to other factors. We believe that, just as higher population densities are good for most businesses by creating a largely customer base, a higher population density creates more opportunities for corruption and more demand for the services offered by those who are corrupt.

The number of years of experience of the reporting lawyer is also significant. The more years of experience a lawyer has, the lower levels of corruption he or she reports. One possible explanation is that older lawyers have a basis of comparison to be able to compare the current system to the system it replaced in 1998, and were therefore inclined to rate current corruption lower. Most of those interviewed said that the court system had improved significantly as a result of reforms. Another possible explanation is that senior lawyers are more likely to be implicated in corruption themselves, and this bias might lead them to underreport.

The rating the lawyer gives to the corruption level in the Georgian government is also significant. The higher the lawyer rates corruption in the government, the higher the level of corruption the lawyer reports in the court in which he practices most frequently. This may reflect a sensitivity to corruption issues, or a lack of trust in public institutions.

This regression has been confined to an appendix both because we believe that our concerns about the measurement of judicial TAPEE factors are reflected in the very low R^2 , as well as the unexpected signs and significance of certain key variables.

2. Explaining Court Staff Corruption

TAPEE Concept		(1)	(2)	(3)	(4)
		Jpcorrlevel	jpcorrlevel	jpcorrlevel	jpcorrlevel
Values	jpvalues	0.08	0.07	0.09	0.10
		(1.45)	(1.44)	(1.65)	(2.15)*
Transparency	jpobserved	0.15082	-0.06262		
		(1.18)	(0.62)		
Transparency	jpreported	0.01	0.01		
		(0.20)	(0.23)		
Enforcement	jppunished	-0.14	0.09		
		(1.04)	(0.81)		
Accountability	jpstrict	-0.19	-0.10		
		(3.09)#	(1.31)		
Values	jpsohonest	0.31	0.20	0.24	0.23
		(2.33)*	(2.00)+	(2.15)*	(2.12)*
	region==2	1.03		0.74	
		(1.10)		(0.82)	
	region==3	0.11		0.17	
		(0.13)		(0.17)	
	region==4	0.00		0.00	
		(.)		(.)	
	region==5	-1.37		-1.91	
		(1.31)		(2.15)*	
	region==6	-0.04		-0.10	
		(0.04)		(0.08)	
	region==7	1.62		1.30	
		(2.96)#		(2.07)*	
	region==8	1.35		1.13	
		(2.33)*		(1.94)+	
	region==9	1.62		0.95	
		(1.89)+		(1.13)	
	region==10	2.25		1.58	
		(2.50)*		(1.75)+	
	logpop	0.97	0.57	0.79	0.55

		(3.66)#	(7.33)#	(2.67)*	(7.54)#
	experience	-0.06	-0.06	-0.06	-0.06
		(3.67)#	(3.90)#	(3.55)#	(3.92)#
	Corruption in Georgia	0.11	0.11	0.11	0.11
		(1.52)	(1.48)	(1.47)	(1.45)
	Observed*Reported*Punished*Strict			-0.00012	-0.00009
				(2.06)*	(1.46)
	Constant	-12.13	-5.80	-9.51	-6.17
		(2.65)*	(3.33)#	(2.07)*	(3.87)#
	Observations	670	670	670	670
	R-squared	0.11	0.09	0.10	0.09

Robust t statistics in parentheses

* significant at 5%; # significant at 1%

Discussion

Table A.2 shows the results of four regressions run to explain the judicial personnel (court staff) corruption levels reported by lawyers, with the errors clustered by court. Lawyers' reports of corruption in a particular court were regressed against the average judicial report of TAPEE factors for the court.

When TAPEE factors enter the regression separately, as in regressions (1) and (2), the results are uneven. “Jpvalues”, which is a self-report of how disturbed the judge would be by a corrupt act by a court staff colleague, is not significant. “Jpobserved”, which is the reported likelihood that judicial personnel committing such an act would be observed, is not significant. “Jpreported,” which is the likelihood that a person, once observed, would be reported to the authorities, is not significant. “Jppunished,” which is the reported likelihood that judicial personnel, once reported, would be punished, is not significant.

When “jpobrepust”, the expected cost (the overall likelihood of being observed, reported and punished time the strictness of punishment) enters the regression instead (see regressions (3) and (4)), it is significant in regression (3) with the expected sign, but is not significant in regression (4).

“Jpsohonest”, which is the reported percentage of colleagues who are so honest that they would not commit a corrupt act even if there were not chance of getting caught, is significant, but with an unexpected sign. We would normally expect that the more honest colleagues a court has, the lower the corruption level; but this does not seem to be the case here.

A number of the regional variables are significant, indicating statistically significant regional variations in corruption levels. An example of such factors might be the poverty or wealth of a region, or the existence of a tight clan system that would facilitate relational corruption.

The log of the population density of the rayon in which the court is located (“logpop”) is statistically significant and the impact of population is comparatively large compared to other factors. We believe that, just as higher population densities are good for most businesses by creating a largely customer base, a higher population density creates more opportunities for corruption and more demand for the services offered by those who are corrupt.

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